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COMMITTEE ON RELATIONS WITH THE
HOST COUNTRY

THE PROBLEM OF DIPLOMATIC INDEBTEDNESS

Report of the Secretary-General

I. INTRODUCTION

1. The Committee on Relations with the Host Country, in its report to the General Assembly at its forty-ninth session, approved, on 10 November 1994, among other recommendations and conclusions, the following recommendation: 1/

> "The Committee stresses the importance and urgency of the efforts of its Working Group concerning financial indebtedness, an issue which has harmed the image of the United Nations and its Members in New York, and has impaired the ability of some missions and individual diplomats to obtain services and suitable accommodation. The Committee notes that this issue has also arisen in other host cities to the United Nations, and therefore may require a response that is system-wide. The Committee reminds all permanent missions, their personnel, and Secretariat personnel of their responsibilities to meet their financial obligations, and takes note of the concerns expressed by the host country and others regarding this fast-growing problem. The Committee requests the Chairman and the representative of the host country to meet with the Secretary-General of the United Nations to discuss the question of financial indebtedness and recommends that the Secretary-General prepare a report on the problem in general in time for review by the Committee during the resumed forty-ninth session of the General Assembly, setting forth recommendations which the Organization might consider to address this issue. It also recommends that the Working Group continue its own efforts, in cooperation with all interested parties, to develop solutions to the problem."

2. The General Assembly, in paragraph 1 of its resolution 49/56 of 9 December 1994, endorsed the recommendations and conclusions of the Committee. In operative paragraph 4 of the same resolution, the Assembly voiced its concern

"that the amount of financial indebtedness resulting from non-compliance with contractual obligations of certain missions accredited to the United Nations has increased to alarming pr.portions", reminded "all permanent missions to the United Nations, their personnel and Secretariat personnel of their responsibilities to meet such obligations", and expressed "the hope that the efforts undertaken by the Committee, in consultation with all concerned, will lead to a solution of this problem".

3. On 22 November 1994, I received a letter from the Permanent Representative of the United States to the United Nations, inter alia, advising me that the significant amount of diplomatic debt in New York had begun to tarnish the financial reputation of the United Nations community. The letter welcomed an opportunity for the Chairman of the Committee, Ambassador Alecos Shambos of Cyprus, and the United States Permanent Representative, Ambassador Albright, to meet with me to discuss the seriousness of the situation. It also pledged the full cooperation of the United States Mission in working with the Secretariat in the preparation of the present report.

4. In response, in a letter of 19 December 1994, I expressed my willingness to meet with the Permanent Representative of the host country and the Chairman of the Committee at any time to discuss the matter, and assured them of the Secretariat's readiness to help resolve this difficult matter as soon as possible. It is envisaged that this meeting will take place in the near future.

5. The present report is submitted pursuant to the above-referenced recommendation of the General Assembly.

II. INSTITUTIONAL ASPECTS

A. Discussions in the Committee on Relations with the Host Country

6. I consider it important to recall the background and history of the problem as well as the evolution of views on the matter through the deliberations in the Committee on Relations with the Host Country.

7. The issue of diplomatic indebtedness has long been an issue before the Committee on Relations with the Host Country. At the 16th meeting of the Committee, on 3 May 1973, the representative of the host country identified the failure of some diplomats to pay their bills as a problem. The members of the Committee concurred that immunity from legal process enjoyed by diplomats and missions made it all the more essential that they fully discharge their moral and legal obligations. In the Committee's report to the General Assembly at its twenty-ninth session, it was noted that "individual diplomats and certain missions have been slow to meet their financial responsibilities", and the Committee therefore called "on all missions and diplomats to settle their financial obligations promptly". 2/

8. At its 44th, 45th, 46th and 47th meetings, held on 8 and 15 July and 8 and 13 August 1975, the Committee again considered the question of outstanding financial obligations of missions and diplomats. At those meetings, the

Committee considered the report (A/AC.154/83) of its Working Group which, inter alia, contained a recommendation that the Committee establish a subcommittee which would deal with specific cases of indebtedness of missions and of their personnel that were brought to the subcommittee's attention. Although a subcommittee was not established, the Committee decided to ask its Working Group to continue to monitor the issue of diplomatic indebtedness including, as appropriate, specific cases in an effort to better understand the general problem. The Committee's report to the General Assembly at its thirtieth session contained a recommendation that "the Secretariat and all others concerned work together to solve these outstanding problems". 3/

9. In succeeding years, the question of diplomatic indebtedness was discussed in the Working Group and then at the meetings of the Bureau of the Committee, and the Committee's recommendations to the General Assembly at its thirty-first, thirty-second, thirty-third, thirty-fourth, thirty-fifth, and thirty-sixth sessions each contained a recommendation regarding the issue of financial obligations of the missions and their members. 4/

10. In May 1982, the Committee on Relations with the Host Country adopted a detailed list of topics for its consideration. The list included an item entitled "Responsibilities of permanent missions to the United Nations and their personnel, in particular the problem of claims of financial indebtedness and procedures to be followed with a view to resolving the issues relating thereto". A review of the deliberations in the Committee as reflected in its reports to the General Assembly for the period from 1982 to 1990 indicates that this item was on the Committee's agenda once in 1985 and twice in 1987. Thus, on 26 February 1985, at its 109th meeting, the New York City Commissioner for the United Nations drew the Committee's attention to the problem of unpaid debts by diplomatic missions and their personnel, which included non-payment of rent, utilities, bills from stores and other items. She, inter alia, offered the services of her office to "serve as mediator to arrange conditions of payment to consolidate debts on real estate". Subsequent to that meeting, the Chairman of the Committee, with the approval of its members, circulated a letter to the diplomatic community in New York in which he drew attention to the problem. 5/

11. At the 124th meeting, on 30 April 1987, the host country representative informed the Committee that his Mission had been experiencing serious problems in connection with non-payment of rent and medical obligations. A number of the best hospitals of New York had made it clear that they could not treat representatives of the permanent missions to the United Nations without payment in advance or evidence of insurance coverage. He urged that it should be made known throughout the diplomatic community that legitimate obligations should be discharged promptly.

12. At the 126th meeting, on 14 October 1987, the representative of the United States informed the Committee that various missions owed more than $2 million to United States property owners, hospitals, doctors, hotels, banks, service stations, contractors and other suppliers of essential goods and services, and asked for cooperation in order to resolve all such problems.

13. The Committee, in its report to the General Assembly at its forty-second session, noted with concern that there had been difficulties concerning unpaid

bills for goods and services rendered by private persons and organizations to certain missions accredited to the United Nations and certain individual diplomats attached to those missions, and suggested that the Secretariat and others work together to solve those outstanding difficulties. 6/

14. From 1991 onwards, the Committee was continuously seized of, and intensified its deliberations on, the problem of diplomatic indebtedness. At the 149th meeting, on 26 March 1991, the representative of the host country stressed, among other things, that this problem had become a major issue in host country affairs. In order to scrutinize and study all the aspects of the problem of financial indebtedness the Committee established, at its 150th meeting, on 30 April 1991, an open-ended Working Group.

15. In his letter of 8 July 1991, 7/ the Chairman of the Committee apprised my predecessor, Mr. Javier Pérez de Cuéllar, of the growing tendency of indebtedness among a number of permanent missions which warranted immediate and concrete action for urgent assistance. 8/ He also informed the Secretary-General that the main issue discussed by the Committee was the general role of the United Nations in responding to the problem of indebtedness, including the possible creation of an emergency fund administered by the United Nations, group health insurance programmes, possible temporary short-term employment in the Secretariat and information programmes sponsored by the United Nations for Member States, highlighting the financial costs arising from the presence of a mission in New York. The letter expressed the hope that concerned United Nations Secretariat offices and departments would provide assistance in the matter.

16. In response, in a letter of 24 July 1991, 9/ my predecessor shared the Committee's understanding of the problem and also expressed the view that, in order to find workable solutions to those problems, certain legal and practical difficulties must be overcome with the active assistance of all concerned, including the competent authorities of the host country. The interested offices and departments of the United Nations Secretariat were requested to examine possible solutions to the problem of indebtedness.

17. It should also be recalled that at the 151st meeting of the Committee the representative of the Legal Counsel stated that the Secretariat recognized the problems of indebtedness and, therefore, understood the efforts of the Committee to seek practical solutions to the problem. It was in that context that the Secretariat saw the letter addressed to the Secretary-General. However, the United Nations was not in a position to recognize any legal liability in matters relating to the insolvency of missions and, as a preliminary view, the Secretariat had certain difficulties of a practical and legal nature with the solutions proposed in the letter to the Secretary-General.

18. In October 1991, in order to find out how similar problems were being handled at other locations, the Legal Counsel sent a cable to the main United Nations duty stations with a request to provide information on how this problem was handled by the host country. A response received from the United Nations Office at Vienna advised that similar problems were generally considered in Austria on a bilateral basis, namely between the mission concerned and the host country. A response from the Economic Commission for Latin America and the

Caribbean (ECLAC) advised that such problems as arose in New York did not arise in Santiago. A more detailed response was received from Switzerland, which indicated that the problem of diplomatic indebtedness was of serious concern and preoccupation for the Swiss authorities.

19. At the 155th meeting, on 22 April 1992, the United States informed the Committee that if the pattern of non-payment of just debts became flagrant, there could be no alternative but to take determined action against the diplomat concerned. The Committee was also informed that after all diplomatic efforts to resolve the problem had been exhausted, the United States had requested that a number of diplomats at two permanent missions should leave the United States if their debts were not satisfied. That decision had been taken after careful consideration within the Government of the United States and in consultation with the Legal Counsel of the United Nations. The missions should not incur financial obligations that could not be met. If necessary, certain Member States should reduce the size of their permanent missions in New York.

20. In turn, the Legal Counsel warned that the problem of indebtedness risked putting into jeopardy some of the traditional privileges and immunities enjoyed by diplomats, in particular the inviolability of the premises of missions accredited to the United Nations. The United Nations Secretariat had always defended, and would continue to defend, the legitimate rights of missions and their personnel under the 1947 Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, 10/ the 1946 Convention on the Privileges and Immunities of the United Nations 11/ and the 1961 Vienna Convention on Diplomatic Relations. 12/ In this regard, the record of the Organization in general, and of the Office of Legal Affairs in particular, was quite well documented. Not least in this regard was the record of the Committee itself. The defence of such rights, privileges and immunities resulting from international law was immensely difficult if missions or their personnel accumulated large debts, in particular rental debts over an extended period of time, and then invoked diplomatic immunity so that their landlords or other creditors had neither the income from the property nor the possession of the real estate. Referring to a specific case under consideration, the Legal Counsel appealed to the parties concerned to take the necessary steps in all forums, including national courts, to safeguard the important principles of diplomatic immunity and inviolability, of which the inviolability of the premises of missions was an important part, while removing the grounds for allegations of abuse of those rights. He strongly appealed to missions to be mindful that they were expected to pay their debts in full and to ensure that diplomatic privileges and immunities were not used to avoid paying debts.

21. At the 157th meeting of the Committee, on 6 October 1992, the representative of Switzerland expressed the view that since the permanent missions were accredited to the United Nations and not to the host country, it seemed appropriate for the Organization itself, at the request of the host country, to deal with problems caused by the excessively indebted missions, in order to ensure due respect by those missions and by the members of their staff for the relevant laws. Since the host country could not, in principle, constrain missions through normal legal channels to settle their debts or those of their staff, because of the immunity they enjoyed under international law, Switzerland, as the host country of the United Nations Office at Geneva,

reserved the right to resort to other measures, in consultation with the United Nations, when missions accumulated excessive debts. In one case, the Government of Switzerland had taken measures with a view to reducing the staff of an excessively indebted mission, measures which it had implemented with great reluctance.

22. In its report to the General Assembly at its forty-seventh session, the Committee, among other matters, reminded all permanent missions to the United Nations and their personnel of their responsibilities to meet their financial obligations and took note of the concerns of the host country regarding that matter. The Assembly, in its resolution 47/35 of 25 November 1992, noted the establishment by the Committee of a working group to consider problems of financial indebtedness and stressed the importance of efforts undertaken in that regard.

23. Almost a year later, in October 1993, the representative of the host country again reported to the Committee that the problem of debt continued to grow. The total indebtedness had risen by some $1.5 million to more than $5 million. Of that figure, $4 million represented indebtedness of missions themselves; $100,000 was owed by individual mission members; and a surprising $1.2 million was owed by members of missions or Secretariat officials who had departed the United States over the last two years, leaving their personal debts unpaid, which in his view was "astounding and clearly unacceptable". 13/ While this indebtedness rested with only some 30 Member States, some of whose Governments were at that time experiencing political or economic disruptions, none the less, the failure to pay debts still reflected badly on the entire United Nations community. As the indebtedness of some missions continued to mount with no end in sight, it had become very difficult to persuade creditors not to seek relief in the civil court system. For that reason, the number of court cases brought against missions had grown, creating very negative publicity and further legal expense for the missions involved. Consistent with its responsibilities as host country under the Headquarters Agreement, the United States continued to intervene in federal courts, and recently in appeal courts as well, on behalf of missions and individuals with diplomatic privileges and immunities to prevent evictions, attachments of bank accounts or foreclosures on personal property. However, the United States also had the clear obligation to protect the interests of its citizens and creditors, who often found themselves unable to obtain legal relief from the actions of immune diplomatic agents.

24. In its report to the General Assembly at its forty-eighth session, the Committee once again, among other matters, reminded all permanent missions to the United Nations, their personnel and Secretariat personnel of their responsibilities to meet their financial indebtedness, and noted the concerns of the host country regarding this fast-growing problem. With a view to resolving the issues relating thereto, the Committee strongly supported the continuation of the Working Group's efforts to find a solution to the problem. The Assembly, in paragraph 4 of its resolution 48/35 of 9 December 1993, voiced its concern that the amount of financial indebtedness resulting from non-compliance with contractual obligations of certain missions accredited to the United Nations had increased to alarming proportions, reminded all permanent missions to the United Nations, their personnel and Secretariat personnel of their responsibilities to meet such obligations, and expressed the hope that the efforts undertaken by the

Committee, in consultation with all concerned, would lead to a solution of this problem.

25. In 1994, the problem of diplomatic indebtedness in New York worsened. The observer for Switzerland also reported that in Geneva the same problem had developed to such a degree that it had harmed the image of diplomatic personnel and of the United Nations itself. At the 165th meeting of the Committee, on 17 June 1994, the representative of the United States, inter alia, informed the Committee that of the total $5.3 million owed by the diplomatic community, 41 per cent was owed to banks and other financial institutions. As a result of the poor payment record of some members of the United Nations diplomatic community, one prominent bank had decided against making any further loans to missions or diplomats. Another 37 per cent of the debt was owed to landlords. Some missions had not paid rent for two years or more, and a number of residential landlords had either lost their property or were at risk of losing it because diplomatic tenants, who could not be evicted, would neither pay their rent nor leave the property. As a consequence, it was becoming more difficult for diplomats to obtain private leases in New York. The problem gave the entire diplomatic community a bad name, prompting countermeasures from landlords and creditors that affected everyone. He hoped that by working together an acceptable solution could be found, one that would be coordinated with cities such as Geneva and Vienna which hosted United Nations offices.

26. These discussions in the Committee culminated in a request for me to prepare the present report.

B. Working Group on Indebtedness

27. The Working Group on Indebtedness, established by the Committee in April 1991, was mandated to consider all the aspects of the problem. The host country representatives regularly briefed that body on the most important developments relating to indebtedness of missions and their personnel. Among other matters, the Working Group discussed the possibility of setting up a small emergency fund under the auspices of the Business Council for the United Nations and the New York City Commission for the United Nations, Consular Corps and International Business to help missions in distress; possible short-term employment in the Secretariat; group health insurance programmes; and information programmes for Member States highlighting the financial costs arising from the presence of a mission in New York. The Working Group also explored the possibility of engaging the Business Council for the United Nations and the business community of New York City with a view to seeking their assistance in finding practical solutions to the problem of indebtedness.

28. It appears that efforts of the Working Group proved to be most successful in exploring the possibility of arranging more affordable group health and dental services for mission personnel. In April-June 1994 the Working Group visited the New York University Dental School, the United Nations Plaza Dental Clinic and Beth Israel Medical Centre. As a result of those efforts, under the auspices of the Committee and in close cooperation with the host country Mission to the United Nations, an open-ended meeting was held in September 1994 for the entire diplomatic community with the prospective providers of the dental and

health care services. Interested delegations had an opportunity to meet with and hear the presentations of the proposals by the prospective providers.

C. Issue of indebtedness in relation to staff members of the Secretariat

29. The analysis of the deliberations of the Committee indicates that the issue of financial indebtedness of staff members of the Secretariat has never been discussed in detail as a separate subject-matter. In October 1993, the host country representative made a reference to Secretariat officials who had departed the country leaving their personal debts unpaid. According to the updated information provided by the host country in December 1994, there was only one such case when a former staff member had departed the United States leaving behind unsatisfied debts. The information recently provided does not list any cases relating to currently employed staff members of the Secretariat.

30. As it relates to staff members, including those who are entitled to diplomatic privileges and immunities, I would like to reiterate the principled position of the Organization that they must, as a matter of proper conduct, honour their legal and financial obligations without involving the United Nations, and strictly comply with national laws and regulations. This position is reflected in regulation 1.8 of the Staff Regulations. Staff members were recently reminded of the policy of the Organization in these matters in an administrative instruction from the Assistant Secretary-General for Human Resources Management of 14 December 1994 (ST/AI/399). The Organization has always cooperated and will continue to cooperate with the appropriate authorities of Member States with a view to facilitating the proper administration of justice, securing the observance of national laws and regulations and preventing the occurrence of any abuse in connection with the privileges, immunities and facilities to which staff members might be entitled pursuant to applicable international instruments. Since the problem of indebtedness does not appear to be significant in relation to staff members, in the following paragraphs I concentrate primarily on those aspects thereof which are of relevance to the diplomatic community.

III. FINANCIAL ASPECTS

31. According to the most recent data provided to the Secretariat by the United States Mission in its letter to the Legal Counsel of 16 December 1994, the historical figures representing the total of just, uncontested debts of the missions and their personnel as of the end of the year are as follows:

	$
1990	1 232 549.33
1991	2 290 470.27
1992	2 734 508.18
1993	4 244 063.23
1994	7 036 854.38

32. As of 31 January 1995, according to the information of the host country, there are 32 permanent missions of Member States which have incurred debts. Total debts of individual missions range from some $200 to more than $1.9 million in the most extreme case. It appears that the major portion of the debts, more than 40 per cent, is owed to banks; up to 40 per cent is owed to landlords; and the rest is owed for non-payment of various services rendered under contractual obligations.

33. A table indicating the numbers of indebted missions within specific ranges and total amounts of debts within these ranges as at 31 January 1995 is set out in the annex to the present report.

IV. LEGAL ASPECTS

34. In New York, the legal status of permanent missions of Member States and their personnel and the scope of their privileges, immunities and exemptions are governed by the relevant provisions of Article 105 of the Charter of the United Nations, the 1946 Convention on the Privileges and Immunities of the United Nations, the 1947 Agreement between the United Nations and the United States regarding the Headquarters of the United Nations, 14/ as well as by the provisions of the 1961 Vienna Convention on Diplomatic Relations applicable mutatis mutandis.

35. It should be noted that important principles and norms regulating relations between States and international organizations such as the United Nations, its specialized agencies and other intergovernmental organizations of a universal character have been codified in the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character. 15/ Even if that Convention is not yet in force, it represents a significant development of principles and norms on the matter.

36. While the scope of the privileges and immunities, as well as exemptions and facilities of missions and their personnel, is regulated in various degrees of detail by the above-referenced instruments, questions of financial indebtedness are not directly addressed by any of the above-referenced instruments. Nor may those documents be interpreted as foreseeing in any sense the liability of the Organization itself for debts incurred by missions of Member States or their personnel. Since none of those instruments contain any specific provisions on the matter or any reference to procedures to be invoked in order to resolve

contentious situations, the question arises whether international law places an obligation upon States to honour debts of their missions abroad and/or those incurred by their diplomatic personnel.

37. It is my considered opinion that just debts whether by missions or their personnel must be satisfied in full. Since debts are based on or derive, one way or another, from a breach of contractual obligations they contravene one of the fundamental principles of law commonly expressed by the maxim of Roman Law pacta sunt servanda, meaning that contractual obligations are binding upon the parties and must be performed by them in good faith.

38. The principle pacta sunt servanda, being universally recognized, is affirmed in the third preambular paragraph of the Charter of the United Nations and is incorporated in and codified by article 26 of the 1969 Vienna Convention on the Law of Treaties. 16/ Since the great majority of missions in New York do respect their contractual obligations whether within or outside the scope of official activities, such conduct represents a customary rule in this area of relations which should not be underestimated. It should also be recalled that the maxim pacta sunt servanda originated, not in international law, but in Roman civil law, whence it was transferred to international law, and applied to treaty engagements between States. Therefore, it could be said that the principle applies a fortiori in this context of contractual obligations.

39. Under the applicable international instruments, diplomatic personnel, as a rule, enjoy immunity from the jurisdiction of the host State within the scope of their official capacity. Thus, in accordance with section 13 (b) of the 1947 Headquarters Agreement, a person entitled to diplomatic immunities in case of abuse of privileges of residence outside his official capacity is not exempt from "the laws and regulations of the United States regarding the continued residence of aliens". Article 31 of the 1961 Vienna Convention, providing for immunity of a diplomatic agent, not only from the criminal jurisdiction, but also from the civil and administrative jurisdiction of the receiving State, unequivocally specifies among the three exceptions when the latter immunity is not granted "an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions" (emphasis added). 17/ Thus, it is clear that if a diplomatic agent incurs debts outside his official capacity as a result of any professional or commercial activity, such a person cannot invoke his immunity in order to refrain from resolving the claim through judiciary means.

40. Whether debts are incurred within the official capacity or outside thereof, in any event, pursuant to Article 41 of the 1961 Vienna Convention, "it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State". Therefore, in the context of the matter under discussion it follows from this provision that Member States must take the appropriate measures to see to it that unpaid debts are settled.

V. OBSERVATIONS

41. The problem of diplomatic indebtedness is a matter of significant concern to the Organization. Non-payment of just debts reflects badly on the entire diplomatic community and tarnishes the image of the United Nations itself. Non-compliance with contractual obligations either by missions or by individual diplomats cannot be condoned or justified.

42. It is, however, important to describe the problem in its right proportions. An analysis of the information available shows that the vast majority of the 184 missions of Member States in New York and their diplomats (over 1,800) honour their obligations. From annex I to the present report, it follows that the total uncontested debts owed by missions (including their personnel) in New York as at 31 January 1995 amounts to $7,013,735. Of this figure, $5,842,477 or 83 per cent is attributable to five missions. (The situation at the United Nations Office at Geneva, as presented in a submission by the Swiss Permanent Mission at Headquarters, is described in annex II.) A further analysis of the information available in the Secretariat as well as more detailed data on diplomatic indebtedness provided by the United States Mission indicates that in the most serious cases the excessive indebtedness of missions is attributable to, and continues to persist as a result of the ongoing political and economic instability experienced by certain Member States. The missions of these Member States (a) do not receive financing for prolonged periods of time, or (b) receive insufficient funds, or (c) are financed on an irregular basis. However, a significant amount of debt appears to have accumulated as a result of inadequate management of available financial resources, either by the missions themselves or by individual members of the staffs of the missions.

43. The general conclusion which is to be drawn from the preceding paragraph is that there seem to be basically two distinct reasons for indebtedness: either political and economic instability in the Member State concerned, or inadequate management of available funds by a mission or its personnel. In order to rectify the situation, in the first instance, the problem must be primarily addressed in the capital of the Member State concerned, while in the other instance, the problem may be addressed at the mission itself.

44. Until now, the following major remedies have been identified and discussed: creation of an emergency fund, group health insurance programmes, short-term employment in the Secretariat and information programmes. A review of the progress made so far in examining these ideas leads to the following observations.

45. The idea of establishing an emergency fund for missions in distress featured prominently in the deliberations of the Working Group and the Committee. In October 1991, it was also examined by a group of high-level officials of the Secretariat. However, no specific proposals emerged from these efforts. This idea as such seems to be attractive since the setting up of such a fund would shift the burden of the creditors from missions to the fund. However, such a proposal would require a thorough scrutiny and consideration. It is evident that, should such a fund be established under the auspices of and administered by the United Nations, at least the following two aspects would have to be clarified, i.e. the source of funding and the organ with decision-

making power. While a solution to the latter question could be a special committee composed of Member States, as to the former question it is unclear whether the fund could be financed through voluntary contributions or from the regular budget. In any event, this proposal would have to be examined by the Advisory Committee on Administrative and Budgetary Questions and the Fifth Committee in terms of its eventual programme and budget implications for the Organization. Subsequently, it would have to be submitted to the General Assembly for endorsement. However, it is also clear that administration of the fund would, of course, entail the involvement of substantial human and financial resources and as such would represent an operation of some magnitude for the Secretariat. Therefore, this option does not appear feasible and viable. Instead, I believe that the Committee should rather be encouraged to further explore the possibility of establishing such a fund under the auspices of the Business Council for the United Nations, the New York City Commission for the United Nations, Consular Corps and International Business and other interested parties.

46. It appears that, among the measures and steps discussed and/or undertaken by the Committee to alleviate the problem of indebtedness so far, the most successful has proved to be its efforts in exploring the possibility of arranging more affordable group health and dental services for mission personnel. An open-ended meeting held in September 1994 for the entire diplomatic community with the prospective providers of the dental and health services was a useful forum in identifying for interested delegations concrete ways and means of improving the situation in this area. I hope that these efforts will help to reduce, if not eliminate altogether, the financial indebtedness of missions stemming from this source.

47. The idea of providing temporary employment in the Secretariat to personnel of missions in acute distress owing to extreme emergency in the sending State was also scrutinized by the above-mentioned meeting of high-level officials of the Secretariat in October 1991. Owing to difficulties of a practical and legal nature, the idea was found unworkable. It is not consonant with the relevant provisions of the Charter of the United Nations regarding the Secretariat of the Organization, the Staff Regulations and Rules as well as current policies of the Organization in matters of recruitment. It does not seem to me advisable to explore this idea any further.

48. However, the idea of information programmes for Member States highlighting the financial costs arising from or associated with the presence of a mission in New York, was not thoroughly examined. In my view, this idea deserves further attention since the proposed information programmes could be of assistance to certain Member States in ascertaining optimal parameters for their missions in New York. In addition, an information brochure, among other materials, may contain the relevant provisions of the Charter, the 1946 Convention on the Privileges and Immunities of the United Nations, the 1947 Agreement between the United Nations and the United States regarding the Headquarters of the United Nations and the 1961 Vienna Convention on Diplomatic Relations, as well as other pertinent documents. I think that the Committee should be encouraged to further explore this proposal with the assistance of the host country Mission and the New York City Commission for the United Nations.

49. It is clear that the primary responsibility for mission debts lies solely with the Member States concerned. The United Nations has no legal liability in matters relating to the insolvency of missions of Member States or mission personnel.

50. It is reasonable to expect that the head of a mission who foresees that the available funds will not suffice for the normal work of his mission, or who is faced with the fact of insufficient or irregular financing, will promptly report the matter to the competent national authorities with a view to according to the question of financing the highest priority and utmost importance. It is also reasonable to expect that the head of the mission will contact the host country Mission, in due course, in order to prevent any misunderstanding by the latter of the situation of the former. Member States may in such circumstances have no other choice than to take appropriate steps in order to rectify the situation. Such steps may include, but not be limited to, reduction of the size of the mission staff to an affordable level. In any event, it appears to me that an early contact between the distressed and the host country Missions would be important and conducive to a possible minimizing of the undesirable effects of the potentially, or already emerging, negative situations.

51. In cases of extreme emergencies faced by certain Member States, the role of regional organizations in assisting such Members should not be underestimated. Among possible forms of help, observer missions of the regional organizations accredited to the United Nations may be of assistance to missions in distress, especially when staff of those missions have been reduced owing to financial constraints. It may also be advisable that a certain portion of funds made available to the Organization from various sources for a Member State facing an extreme emergency be specifically allocated, with the consent of all concerned, for the financing of its mission to the Organization at a minimal level.

52. In situations where the source of indebtedness appears to be attributable to inadequate management of available funds either by the mission or by individual members of the mission personnel, Member States should direct missions and their personnel not to incur financial obligations that cannot be met. They must ensure that their missions or mission personnel do not hide behind diplomatic privileges and immunities to avoid paying just debts. Missions and their personnel are expected to fully respect the relevant laws and regulations of the host country and discharge legitimate financial obligations without delay.

53. The United Nations Secretariat is prepared to provide appropriate assistance to help resolve individual cases of insolvency reported to the Organization, for example in the form of its good offices or through mediation. In particular, in specific cases, the Organization will try to use its influence in convincing the indebted mission or a mission whose staff incur debts to take prompt and adequate measures to satisfy just debts. If so requested, the Organization has interceded, is interceding and will continue to intercede between the contending parties. However, it is clear that the Secretariat has neither the means nor the authority in host countries to conduct investigative activities with a view to ascertaining the debt situations of missions. Therefore, the cooperation of all parties concerned, including the competent host country authorities, is of critical importance for the United Nations

Secretariat in its efforts aimed at facilitating the proper administration of justice. In this connection I should like to take this opportunity to express my appreciation to the Host Country Section of the United States Mission to the United Nations for its cooperation in this area and in particular for the information it provided for the preparation of the present report.

54. The Mission of the host State should continue to forward to the Office of Legal Affairs information about just and uncontested debts. If this information concerns a head of the mission, the Legal Counsel of the United Nations would request an explanation from the same and then advise the host country Mission on the substance of his contacts with the head of the mission concerned. If the information concerns another member of the mission staff, as a first step, the host country Mission should take the matter up with the head of the mission concerned, inter alia, informing the latter of the fact that one of his subordinates is in breach of his/her contractual obligations. The host country Mission could also seek clarification on how the head of the mission intends to deal with the matter. However, if there is no reply from the latter or the matter appears to have been handled unsatisfactorily, the host country Mission, after careful consideration, could forward the information to the Legal Counsel, who in turn may address a letter to the head of the mission requesting him or her to take the appropriate measures to ensure that staff members abide by the laws and regulations of the host country and that just debts are satisfied promptly and in full.

VI. RECOMMENDATIONS

55. Based on the foregoing observations, I should like to set forth the following recommendations in pursuance of General Assembly resolution 49/56 of 9 December 1994:

(a) The Committee may wish to report to the General Assembly that diplomatic indebtedness is a matter of significant concern to the United Nations and that non-payment of just debts reflects badly on the entire diplomatic community and tarnishes the image of the Organization itself. The Committee may also wish to propose that the General Assembly issue a statement to the effect that non-conformity by either missions or individual diplomats with contractual obligations cannot be condoned or justified;

(b) The Committee may wish to consider adopting the following guidelines for missions accredited to the United Nations in order to avoid or reduce to the greatest extent possible indebtedness:

(1) A head of a mission who foresees or is faced with the fact that funds for the financing of the mission will not suffice should immediately notify the appropriate authorities in the sending State as well as the Mission of the host State and take appropriate action in order to avoid or minimize the risk of damages to third parties, including, but not limited to, reducing the staff of the mission;

(2) A head of a mission who is informed that members of his staff do not fulfil their contractual obligations and incur debts should take

appropriate measures in order to ensure that the unpaid just debts are settled promptly and in full;

(3) The Mission of the host State should forward to the Office of Legal Affairs, on a regular basis, information about just and uncontested debts which are unpaid;

(4) If the information concerns a head of the mission, the Legal Counsel should request an explanation from the same. If there is no such explanation, or it is found unsatisfactory, then the Legal Counsel should formally notify the head of the mission of the contents of the statement by the General Assembly (referred to in recommendation (a) above). If the Legal Counsel is not informed within one month after his notification that the debt has been settled, he should bring the matter to the attention of the Secretary-General;

(5) If the information concerns another member of the mission staff, the United States Mission to the United Nations should take the matter up with the head of the mission concerned. If the result is unsatisfactory, the United States Mission to the United Nations may bring the matter to the attention of the Legal Counsel, who may raise the matter with the head of the mission concerned;

(c) Based on the information supplied by the host country Mission, the Secretariat should inform the Committee on Relations with the Host Country on a yearly basis of the numbers of missions which have outstanding debts within specific ranges as appears in the annex to the present report;

(d) The Committee may wish to prepare an information brochure which, among other matters, should highlight the financial costs arising from the presence of a mission in New York. It may also reproduce the relevant provisions of the Charter of the United Nations, the 1946 Convention on the Privileges and Immunities of the United Nations, the 1947 Agreement between the United Nations and the United States regarding the Headquarters of the United Nations and the 1961 Vienna Convention on Diplomatic Relations, as well as the statement by the General Assembly on the matter referred to in recommendation (a) above.

VII. CONCLUDING REMARKS

56. The Committee on Relations with the Host Country is an appropriate and important forum where various aspects of the problem of financial indebtedness of missions are being discussed by all concerned. The Working Group on Indebtedness has proved to be an important body in finding and recommending to the Committee practical and workable solutions to the problem. Efforts undertaken within the framework of those organs should be continued. However, in view of the general importance of the matter to the diplomatic community as a whole, Member States may wish to consider whether this subject should be discussed by one of the Main Committees of the General Assembly. Should they so decide, the Sixth Committee would seem to me to be an appropriate forum.

57. The United Nations will continue to defend the legitimate rights of missions and their personnel under the applicable international legal instruments. However, missions should be mindful that their just, uncontested debts are to be paid promptly and in full. It is my sincere hope that, with good cooperation between the Organization, the missions accredited to it and the Mission of the host country, it will be possible to achieve a solution to the problem of diplomatic indebtedness.

Notes

1/ Official Records of the General Assembly, Forty-ninth Session, Supplement No. 26 (A/49/26), para. 73 (e).

2/ Ibid., Twenty-ninth Session, Supplement No. 26 (A/9626), para. 88 (8).

3/ Ibid., Thirtieth Session, Supplement No. 26 (A/10026), para. 66 (5).

4/ The full text of these recommendations reads as follows:

"The Committee has been informed that there have been difficulties concerning unpaid bills for goods and services rendered by private persons and organizations to certain missions accredited to the United Nations and certain individual diplomats attached to those missions, and suggests that the Secretariat and others concerned work together to solve these outstanding difficulties."

5/ Official Records of the General Assembly, Fortieth Session, Supplement No. 26 (A/40/26), paras. 52 and 53.

6/ Recommendation 7 adopted by the Committee at its 128th meeting, on 20 November 1987; ibid., Forty-second Session, Supplement No. 26 (A/42/26), para. 83 (7).

7/ Ibid., Forty-sixth Session, Supplement No. 26 (A/46/26), annex I.

8/ At the 151st meeting of the Committee, on 27 July 1991, the host country representative informed the Committee that his mission, with the assistance of the New York City Commission for the United Nations and Consular Corps, the New York City Administration of Human Resources and the Church Centre for the United Nations, and in coordination with the United Nations Secretariat, had arranged for a shipment of 100 parcels of food to a mission that had not received funds from the sending State for almost a year, because of a change in government.

9/ Official Records of the General Assembly, Forty-sixth Session, Supplement No. 26 (A/46/26), annex II.

10 General Assembly resolution 169 (II).

11/ United Nations, Treaty Series, vol. I, No. 4, p. 15.

12/ Ibid., vol. 500, No. 7310, p. 95.

13/ Official Records of the General Assembly, Forty-eighth Session, Supplement No. 26 (A/48/26), para. 44.

14/ In other locations of major United Nations offices, appropriate headquarters agreements have been concluded with the host States.

15/ United Nations, Juridical Yearbook, 1975, p. 87.

16/ United Nations, Treaty Series, vol. 1155, No. 18232, p. 331.

17/ Two other exemptions are as follows:

"A real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the Mission;

"An action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State".

ANNEX I

Total uncontested debts owed by missions at Headquarters (including their personnel) within specific ranges, as at 31 January 1995

(In United States dollars)

Range of debt	Number of missions	Amount of debts within range
1-5,000	6	8 910.66
5,000-10,000	4	26 073.89
10,000-20,000	4	54 056.46
20,000-30,000	3	73 911.94
30,000-50,000	2	87 593.32
50,000-100,000	4	283 650.57
100,000-150,000	3	400 478.52
200,000-250,000	1	236 582.12
300,000-350,000	1	310 502.06
600,000-700,000	1	686 451.34
1-1.1 million	1	1 002 043.82
1.8-2 million	2	3 843 479.90
Total	32	7 013 734.60

ANNEX II

The situation of diplomatic indebtedness at the United Nations Office at Geneva, as at 10 February 1995 a/

Of 140 States represented at the United Nations Office at Geneva, 28 permanent missions owe debts in the amount ranging between 400 and 1.6 million Swiss francs. Eleven missions owe debts in amounts over Sw F 100,000. The total indebtedness amounts to more than Sw F 5 million. Some of these debts are long term. Moreover, it is possible that certain debts have not been reported to the Swiss authorities by creditors. Therefore, the above-mentioned figures, being as of 1 February 1995, do not reflect the actual situation. The great majority of debts are related to accommodation (rent, electricity, postal, telephone and telecommunications services, etc.) for either office premises of missions or apartments of their members. This situation adversely affects the newly arrived members of missions who experience increasing difficulties in finding accommodation, while realtors in general become more and more suspicious towards the diplomatic community.

Notes

a/ Information provided to the Legal Counsel by the Permanent Observer Mission of Switzerland to the United Nations in a communication dated 10 March 1995.